IN THE

Supreme Court of the United States

October Term, 1970
No. 85

GUY PORTER GILLETTE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

No. 325

LOUIS A. NEGRE,

Petitioner,

vs.

STANLEY R. LARSEN, Commanding General, *et al.*

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE.

The undersigned, George T. Altman, as attorney and on his own behalf, hereby moves the Court for leave to file the brief *amicus curiae* submitted herewith, in support of reversal of the decisions below.

The reason for his submitting this brief is his concern as attorney with pending matters involving the same issue, and his attendance at meetings of attorneys likewise concerned.

The undersigned has the express written consent of the Solicitor General to the filing of this brief. He also requested the consent of the attorneys for both petitioners. Their responses, in writing, state only that the filing may be too late.

The brief is limited to argument and rests upon a single case, one also heavily relied on by respondents. The undersigned attorney firmly believes that it presents a very important point and strongly urges for that reason that this motion be granted.

November 25, 1970.

GEORGE T. ALTMAN

BRIEF AMICUS CURIAE.

This brief is in support of reversal of the decisions below.

The brief for respondents states, at page 19, quoting from *Sicurella v. United States*, 348 U.S. 385, 391, that in the statutory provision involved herein providing for exemption from service, of conscientious objectors to "participation in war in any form," Congress had in mind as the scope of "war in any form"—

> "actual military conflicts *between nations* of the earth *in our time*—wars with bombs and bullets, tanks, planes and rockets." (Emphasis added.)

Then the brief states:

> "As to this 'type' of war, it is implicit in the Court's language that a conscientious objection, on religious grounds, must under the terms of the statute be absolute."

But, the brief contends, the objection of petitioners does not qualify because it is not to that type of war, completely, but only the conflict in Vietnam (Br. 5, 10).

In the first place, however, it is readily observable that the Vietnam conflict is not that type of war at all. It is not "between nations;" it is strictly a war against an ideology, a sort of crusade, like those so in fact entitled, the "Crusades" of the 12th and 13th centuries. This is made clear in all government reports, and all press reports, and we ask this Court to take judicial notice of it. The "enemy" is not a "nation," nor even the citizens or members of a nation. It is the in-

dividuals in and around Vietnam, however organized, who believe in, or are sympathetic to, or support, a given economic ideology. Everywhere in reports they are identified solely as "communists." The reports of the "body count" especially make this clear. Our casualties are identified as "American" casualties; those of the local forces we support, as "South Vietnamese" casualties; but those of the "enemy" as casualties of the "communists."

That is obviously the reason why there was no declaration of war; there could not be any against an ideology. That is also why the character of the fighting is what it is. The "search and destroy" missions are directed against the believers in, or supporters of, that ideology, whether armed or unarmed, whether man, woman or child. If there is an area in which the people are all thought to be in that category, it is labeled a "free-fire zone," meaning that all human life there is to be destroyed. That is the way it must be; for viewed from the standpoint of the fight against that ideology, each believer in it, regardless of physical armament, sex, or age, is an armed enemy.

It is easy to demonstrate, in the second place, that for the United States no other type of war is possible "in our time." Nuclear war, whether between nations or otherwise, is impossible. A nation would have to go berserk to attempt it, strictly from the standpoint of its own survival. We used the atom bomb in 1945 because at that time we, and our then atomic associates,

England and Canada, were the only ones who knew how to make it, and we alone had the bomb itself.

It is clear also that in that type of war the word "participation" in the exemption provision here involved would have no meaning. Individual soldiers could serve no purpose in that type of conflict.

What is left of weapons—nonnuclear bombs, bullets, tanks, *et cetera*—has now become small arms. No nation which has nuclear capability would dare rely on those small arms against another nation which could respond with nuclear weapons. It results that for the United States a war "between nations," employing troops, no longer presents a realistic possibility "in our time." The type of war represented by Vietnam, a war with those small arms, and against individuals however organized, because of their economic beliefs, a crusade against their ideology, has become as a result the only type of war possible "in our time." Were it not for the anti-communist hysteria in the United States, a hysteria which has reached the level of what is known medically as "collective psychosis", even this type of war would not be possible. As evidenced by their recoil from the reports of massacres by our troops, the people of the United States are human beings.

Thus the "type" of war as to which respondents say conscientious objection must be "absolute" does not exist and is no longer possible, and the "type" of war which is possible and which in fact is going on, to that "type" the petitioners' objection is absolute.

Therefore *Sicurella* clearly supports them; for the thrust of that case is wholly to eliminate from "war in any form" the impossible and the visionary, to confine the term to the possible and the real. Nothing is more possible, nothing is more real, than the here and the now. Nothing is more clearly "in our time." Respondents in their brief make no attempt to describe, in terms related to the world we in fact live in, the world as it actually is, in just what "form," and how, a war involving American forces could or might arise, could or might be, different in any significant sense from the war that is. They do not and they cannot.

For the reasons stated the decisions below should be reversed.

Respectfully submitted,

GEORGE T. ALTMAN.